

# HOUSE BILL No. 1311

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 7.1-3; IC 7.1-4-4.1; IC 7.1-5-9; IC 16-18-2-137; IC 16-42-5-30.

**Synopsis:** Alcoholic beverage issues. Raises the barrel limit for a small brewery from 30,000 barrels a year to 90,000 barrels a year. Establishes requirements for farmers' markets where wine or beer are sold. Provides that the holder of a farm winery permit or a small brewer's permit that provides only wine or beer by the glass at a festival, fair, or other temporary location and does not provide food: (1) is exempt from the sanitation requirements governing food establishments; and (2) may not be subject to local government licensure, registration, or certification. Allows a small brewer to sell the brewer's beer to consumers for carryout at a farmers' market in a quantity of not more than 576 ounces per consumer at any one time. Allows a small brewer, with the approval of the alcohol and tobacco commission (commission), to participate in a trade show or an exposition for not more than 45 days in a calendar year. Provides that small brewers that sell beer by the glass are not subject to the commission's minimum food requirements. Allows a small brewer to store or condition beer in a building separate from the brewery that is owned or leased by the brewer. Provides that to qualify for an artisan distiller's permit, a person must hold at least a majority ownership interest (instead of 100% ownership interest) in the entity that holds a farm winery, brewer's, or distiller's permit. Provides that a township or county (in addition to a city or town) may not regulate a liquor retailer's business or affect a person's ability to hold a liquor retailer's permit. Repeals a provision requiring the clerk of a city or town to certify and mail to the commission an ordinance regulating a liquor retailer in violation of the law.

**Effective:** July 1, 2015.

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**Clere, Dermody, Forestal, Macer**

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January 13, 2015, read first time and referred to Committee on Public Policy.

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First Regular Session of the 119th General Assembly (2015)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

## HOUSE BILL No. 1311

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A BILL FOR AN ACT to amend the Indiana Code concerning alcohol and tobacco.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 7.1-3-1.2 IS ADDED TO THE INDIANA CODE  
2       AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
3       JULY 1, 2015]:

4       **Chapter 1.2. Alcoholic Beverage Sales at Farmers' Markets**

5       **Sec. 1. As used in this chapter, "end consumer" means a person**  
6       **who is the last person to purchase any product and who does not**  
7       **resell the product to consumers.**

8       **Sec. 2. As used in this chapter, "farmers' market" means a**  
9       **common facility or location where vendors gather on a regular**  
10       **basis to distribute and sell farm products, food products, and other**  
11       **retail items that are grown or produced by the vendors directly to**  
12       **end consumers, including meat, produce, dairy, grain, fruit, wine,**  
13       **beer, honey, baked goods, and nonfood retail items.**

14       **Sec. 3. As used in this chapter, "vendor" means a farmer,**  
15       **grower, or producer that sells food or products to end consumers**



1 at a farmers' market. The term includes the holder of a farm  
 2 winery permit under IC 7.1-3-12-5 or a brewer's permit under  
 3 IC 7.1-3-2-7(5) that sells alcoholic beverages at a farmers' market.

4 **Sec. 4. A farmers' market at which alcoholic beverages are sold**  
 5 **must meet all of the following requirements:**

6 (1) The farmers' market must be operated by a state or local  
 7 government or nonprofit organization that is exempt from  
 8 taxation under Section 501 of the Internal Revenue Code.

9 (2) The farmers' market must have at least ten (10) vendors  
 10 at any one (1) time.

11 (3) At any time during the business hours of the farmers'  
 12 market, not more than ten percent (10%) of the vendors may  
 13 be engaged in selling alcoholic beverages.

14 SECTION 2. IC 7.1-3-2-2, AS AMENDED BY P.L.71-2012,  
 15 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 16 JULY 1, 2015]: Sec. 2. (a) The commission may issue a brewer's  
 17 permit for a brewery that manufactures more than ~~thirty thousand~~  
 18 ~~(30,000)~~ **ninety thousand (90,000)** barrels of beer in a calendar year  
 19 for sale or distribution within Indiana. The commission may issue a  
 20 permit under this subsection only to:

21 (1) an individual;

22 (2) a partnership, all the partners of which are bona fide residents  
 23 of Indiana;

24 (3) a limited liability company, all the members of which are bona  
 25 fide residents of Indiana; or

26 (4) a corporation organized and existing under the laws of Indiana  
 27 and having authority under its charter to manufacture or sell beer.

28 The permit does not limit the number of barrels of beer in a calendar  
 29 year that the brewer may manufacture for sale or distribution outside  
 30 Indiana.

31 (b) The commission may issue a brewer's permit to a brewer for a  
 32 brewery that manufactures not more than ~~thirty thousand (30,000)~~  
 33 **ninety thousand (90,000)** barrels of beer in a calendar year for sale or  
 34 distribution within Indiana. The commission may issue a permit under  
 35 this subsection only to:

36 (1) an individual;

37 (2) a partnership organized and existing under the laws of  
 38 Indiana;

39 (3) a limited liability company organized and existing under the  
 40 laws of Indiana; or

41 (4) a corporation organized and existing under the laws of  
 42 Indiana.



1 The permit does not limit the number of barrels of beer in a calendar  
 2 year that the brewer may manufacture for sale or distribution outside  
 3 Indiana.

4 SECTION 3. IC 7.1-3-2-7, AS AMENDED BY P.L.71-2012,  
 5 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 6 JULY 1, 2015]: Sec. 7. The holder of a brewer's permit or an  
 7 out-of-state brewer holding either a primary source of supply permit or  
 8 an out-of-state brewer's permit may do the following:

- 9 (1) Manufacture beer.
- 10 (2) Place beer in containers or bottles.
- 11 (3) Transport beer.
- 12 (4) Sell and deliver beer to a person holding a beer wholesaler's  
 13 permit issued under IC 7.1-3-3.
- 14 (5) If the brewer's brewery manufactures not more than ~~thirty~~  
 15 ~~thousand (30,000)~~ **ninety thousand (90,000)** barrels of beer in a  
 16 calendar year for sale or distribution within Indiana, the permit  
 17 holder may do the following:
  - 18 (A) Sell and deliver beer to a person holding a retailer or a  
 19 dealer permit under this title.
  - 20 (B) Be the proprietor of a restaurant.
  - 21 (C) Hold a beer retailer's permit, a wine retailer's permit, or a  
 22 liquor retailer's permit for a restaurant established under clause  
 23 (B).
  - 24 (D) Transfer beer directly from the brewery to the restaurant  
 25 by means of:
    - 26 (i) bulk containers; or
    - 27 (ii) a continuous flow system.
  - 28 (E) Install a window between the brewery and an adjacent  
 29 restaurant that allows the public and the permittee to view both  
 30 premises.
  - 31 (F) Install a doorway or other opening between the brewery  
 32 and an adjacent restaurant that provides the public and the  
 33 permittee with access to both premises.
  - 34 (G) Sell the brewery's beer by the glass for consumption on the  
 35 premises. Brewers permitted to sell beer by the glass under  
 36 this clause ~~must~~ **are not required to** furnish the minimum  
 37 food requirements prescribed by the commission.
  - 38 (H) Sell and deliver beer to a consumer at the permit premises  
 39 of the brewer or at the residence of the consumer. The delivery  
 40 to a consumer may be made only in a quantity at any one (1)  
 41 time of not more than one-half (1/2) barrel, but the beer may  
 42 be contained in bottles or other permissible containers.



(I) Sell the brewery's beer as authorized by this section for carryout on Sunday in a quantity at any one (1) time of not more than five hundred seventy-six (576) ounces. A brewer's beer may be sold under this clause at any address for which the brewer holds a brewer's permit issued under this chapter if the address is located within the same city boundaries in which the beer was manufactured.

**(J) Sell the brewer's beer to consumers for carryout at a farmers' market that meets the requirements of IC 7.1-3-1.2. The delivery to a consumer under this clause may be made only in a quantity of not more than five hundred seventy-six (576) ounces at any one (1) time, but the beer must be contained in bottles or other permissible containers. The beer sold under this clause must be placed in a bottle or container at the brewer's permit premises.**

**(K) With the approval of the commission, participate:**

**(i) individually; or**

**(ii) with other permit holders under this chapter;**

**in a trade show or an exposition at which products of each permit holder participant are displayed, promoted, and sold. The commission may not grant to a holder of a permit under this chapter approval under this clause to participate in a trade show or exposition for more than forty-five (45) days in a calendar year.**

**(L) Store or condition beer in a building that is:**

**(i) separate from the brewery; and**

**(ii) owned or leased by the permit holder.**

(6) If the brewer's brewery manufactures more than ~~thirty thousand (30,000)~~ **ninety thousand (90,000)** barrels of beer in a calendar year for sale or distribution within Indiana, the permit holder may own a portion of the corporate stock of another brewery that:

(A) is located in the same county as the brewer's brewery;

(B) manufactures less than ~~thirty thousand (30,000)~~ **ninety thousand (90,000)** barrels of beer in a calendar year; and

(C) is the proprietor of a restaurant that operates under subdivision (5).

(7) Provide complimentary samples of beer that are:

(A) produced by the brewer; and

(B) offered to consumers for consumption on the brewer's premises.

(8) Own a portion of the corporate stock of a sports corporation



that:

(A) manages a minor league baseball stadium located in the same county as the brewer's brewery; and

(B) holds a beer retailer's permit, a wine retailer's permit, or a liquor retailer's permit for a restaurant located in that stadium.

(9) For beer described in IC 7.1-1-2-3(a)(4):

(A) may allow transportation to and consumption of the beer on the licensed premises; and

(B) may not sell, offer to sell, or allow sale of the beer on the licensed premises.

SECTION 4. IC 7.1-3-9-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 6. ~~Certain Local Ordinances Proscribed:~~ (a) A city, ~~or town,~~ **township, or county** shall not enact an ordinance, **resolution, policy, or rule** which in any way, directly or indirectly, regulates, restricts, enlarges, or limits the operation or business of the holder of a liquor retailer's permit as provided in this title.

(b) A city, ~~or town,~~ **township, or county** shall not enact an ordinance, **resolution, policy, or rule** covering any other business or place of business for the conduct of it in such a way as to prevent or inhibit the holder of a liquor retailer's permit from being qualified to obtain or continue to hold the permit, or operate to interfere with or prevent the exercise of the permittee's privileges under the permit.

SECTION 5. IC 7.1-3-9-7 IS REPEALED [EFFECTIVE JULY 1, 2015]. ~~Sec. 7: Ordinance Sent to Commission: The city clerk or town clerk of a city or town in which an ordinance proscribed by IC 1971, 7.1-3-9-6, has been enacted, shall, immediately upon the enactment, certify a copy of the ordinance and mail it by registered mail to the commission. The commission, out of its expenses, shall pay the clerk one dollar (\$1.00), for his services in the matter.~~

SECTION 6. IC 7.1-3-12-5, AS AMENDED BY P.L.186-2011, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 5. (a) The holder of a farm winery permit:

(1) is entitled to manufacture wine and to bottle wine produced by the permit holder's farm winery;

(2) is entitled to serve complimentary samples of the winery's wine on the licensed premises or an outside area that is contiguous to the licensed premises as approved by the commission if each employee who serves wine on the licensed premises:

(A) holds an employee permit under IC 7.1-3-18-9; and

(B) completes a server training program approved by the



- 1 commission;
- 2 (3) is entitled to sell the winery's wine on the licensed premises to
- 3 consumers either by the glass, or by the bottle, or both;
- 4 (4) is entitled to sell the winery's wine to consumers by the bottle
- 5 at a farmers' market that **is operated on a nonprofit basis; meets**
- 6 **the requirements of IC 7.1-3-1.2;**
- 7 (5) is entitled to sell wine by the bottle or by the case to a person
- 8 who is the holder of a permit to sell wine at wholesale;
- 9 (6) is exempt from the provisions of IC 7.1-3-14;
- 10 (7) is entitled to advertise the name and address of any retailer or
- 11 dealer who sells wine produced by the permit holder's winery;
- 12 (8) for wine described in IC 7.1-1-2-3(a)(4):
- 13 (A) may allow transportation to and consumption of the wine
- 14 on the licensed premises; and
- 15 (B) may not sell, offer to sell, or allow the sale of the wine on
- 16 the licensed premises;
- 17 (9) is entitled to purchase and sell bulk wine as set forth in this
- 18 chapter;
- 19 (10) is entitled to sell wine as authorized by this section for
- 20 carryout on Sunday; and
- 21 (11) is entitled to sell and ship the farm winery's wine to a person
- 22 located in another state in accordance with the laws of the other
- 23 state.
- 24 (b) With the approval of the commission, a holder of a permit under
- 25 this chapter may conduct business at not more than three (3) additional
- 26 locations that are separate from the winery. At the additional locations,
- 27 the holder of a permit may conduct any business that is authorized at
- 28 the first location, except for the manufacturing or bottling of wine.
- 29 (c) With the approval of the commission, a holder of a permit under
- 30 this chapter may, individually or with other permit holders under this
- 31 chapter, participate in a trade show or an exposition at which products
- 32 of each permit holder participant are displayed, promoted, and sold.
- 33 The commission may not grant approval under this subsection to a
- 34 holder of a permit under this chapter for more than forty-five (45) days
- 35 in a calendar year.
- 36 SECTION 7. IC 7.1-3-22-1, AS AMENDED BY P.L.71-2012,
- 37 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 38 JULY 1, 2015]: Sec. 1. (a) This section applies to a brewer that
- 39 manufactures more than ~~thirty thousand (30,000)~~ **ninety thousand**
- 40 **(90,000)** barrels of beer in a calendar year for sale or distribution
- 41 within Indiana.
- 42 (b) The commission may issue and have outstanding only one (1)



1 brewer's permit for each unit of population of this state of one hundred  
2 and seventy-five thousand (175,000) or major fraction thereof. The  
3 commission, however, shall not issue more than four (4) brewer's  
4 permits in the same congressional district.

5 SECTION 8. IC 7.1-3-23-23, AS AMENDED BY P.L.71-2012,  
6 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
7 JULY 1, 2015]: Sec. 23. (a) This section applies to a brewer that  
8 manufactures more than ~~thirty thousand (30,000)~~ **ninety thousand**  
9 **(90,000)** barrels of beer in a calendar year for sale or distribution  
10 within Indiana.

11 (b) The commission shall revoke the permit of a brewer or beer  
12 wholesaler who holds an interest in another permit in violation of  
13 IC 7.1-5-9-3.

14 SECTION 9. IC 7.1-3-27-5, AS ADDED BY P.L.109-2013,  
15 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
16 JULY 1, 2015]: Sec. 5. (a) Except as provided in section 7 of this  
17 chapter, an applicant for an artisan distiller's permit must meet all the  
18 following requirements to be eligible for an artisan distiller's permit:

19 (1) The permit applicant must hold one (1) of the following  
20 permits for the three (3) year period immediately preceding the  
21 date of the application:

22 (A) A farm winery permit under IC 7.1-3-12.

23 (B) A brewer's permit for a brewery described in  
24 IC 7.1-3-2-7(5).

25 (C) A distiller's permit under IC 7.1-3-7.

26 (2) The permit applicant may not have more than one (1) violation  
27 of this title during the three (3) year period immediately preceding  
28 the date of the application.

29 (3) The permit applicant may not have any violation of this title  
30 during the twelve (12) month period immediately preceding the  
31 date of the permit application.

32 (b) As used in this subsection, "qualifying permit" means a farm  
33 winery, brewer's, or distiller's permit under subsection (a)(1)(A),  
34 (a)(1)(B), or (a)(1)(C) that is required in order to hold an artisan  
35 distiller's permit. The same persons must directly or indirectly own and  
36 control ~~one hundred percent (100%)~~ **more than fifty percent (50%)**  
37 of the entity that holds the qualifying permit and the artisan distiller's  
38 permit.

39 SECTION 10. IC 7.1-4-4.1-14, AS AMENDED BY P.L.71-2012,  
40 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
41 JULY 1, 2015]: Sec. 14. (a) This section applies to the following  
42 permits:





(1) Brewer's permit for the manufacture of more than ~~thirty thousand (30,000)~~ **ninety thousand (90,000)** barrels of beer in a calendar year for sale or distribution within Indiana.

(2) Distiller's permit.

(3) Malt manufacturer's permit.

(4) Rectifier's permit.

(5) Vintner's permit.

(6) Wine bottler's permit.

(b) A permit fee of two thousand dollars (\$2,000) is annually imposed for the issuance of each permit described in subsection (a).

SECTION 11. IC 7.1-4-4.1-16, AS AMENDED BY P.L.71-2012, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 16. The annual fee for a brewer's permit for the manufacture of not more than ~~thirty thousand (30,000)~~ **ninety thousand (90,000)** barrels of beer in a calendar year for sale or distribution within Indiana is five hundred dollars (\$500).

SECTION 12. IC 7.1-5-9-3, AS AMENDED BY P.L.159-2014, SECTION 58, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 3. (a) This section applies to a brewer that manufactures more than ~~thirty thousand (30,000)~~ **ninety thousand (90,000)** barrels of beer in a calendar year for sale or distribution within Indiana.

(b) It is unlawful for the holder of a brewer's or beer wholesaler's permit to have an interest in a liquor permit of any type under this title.

(c) A person who knowingly or intentionally violates this section commits a Class B misdemeanor.

SECTION 13. IC 7.1-5-9-10, AS AMENDED BY THE TECHNICAL CORRECTIONS BILL OF THE 2015 GENERAL ASSEMBLY, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 10. (a) Except as provided in subsection (b), it is unlawful for a holder of a retailer's permit of any type to acquire, hold, own, or possess an interest of any type in a manufacturer's or wholesaler's permit of any type.

(b) It is lawful for a holder of a retailer's permit of any type to acquire, hold, own, or possess an interest of any type in:

(1) a brewer's permit for a brewery that manufactures not more than ~~thirty thousand (30,000)~~ **ninety thousand (90,000)** barrels of beer in a calendar year for sale or distribution within Indiana; and

(2) an artisan distiller's permit if the holder of the retailer's permit also holds a brewer's permit described in subdivision (1).

(c) A person who knowingly or intentionally violates subsection (a)



commits a Class B misdemeanor.

SECTION 14. IC 16-18-2-137, AS AMENDED BY P.L.86-2009, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 137. (a) "Food establishment", for purposes of IC 16-42-5 and IC 16-42-5.2, means any building, room, basement, vehicle of transportation, cellar, or open or enclosed area occupied or used for handling food.

(b) The term does not include the following:

(1) A dwelling where food is prepared on the premises by the occupants, free of charge, for their consumption or for consumption by their guests.

(2) A gathering of individuals at a venue of an organization that is organized for educational purposes in a nonpublic educational setting or for religious purposes, if:

(A) the individuals separately or jointly provide or prepare, free of charge, and consume their own food or that of others attending the gathering; and

(B) the gathering is for a purpose of the organization.

Gatherings for the purpose of the organization include funerals, wedding receptions, christenings, bar or bat mitzvahs, baptisms, communions, and other events or celebrations sponsored by the organization.

(3) A vehicle used to transport food solely for distribution to the needy, either free of charge or for a nominal donation.

(4) A private gathering of individuals who separately or jointly provide or prepare and consume their own food or that of others attending the gathering, regardless of whether the gathering is held on public or private property.

(5) Except for food prepared by a for-profit entity, a venue of the sale of food prepared for an organization:

(A) that is organized for:

(i) religious purposes; or

(ii) educational purposes in a nonpublic educational setting;

(B) that is exempt from taxation under Section 501 of the Internal Revenue Code; and

(C) that offers the food for sale to the final consumer at an event held for the benefit of the organization;

unless the food is being provided in a restaurant or a cafeteria with an extensive menu of prepared foods.

(6) Except for food prepared by a for-profit entity, an Indiana nonprofit organization that:

(A) is organized for civic, fraternal, veterans, or charitable



purposes;

(B) is exempt from taxation under Section 501 of the Internal Revenue Code; and

(C) offers food for sale to the final consumer at an event held for the benefit of the organization;

if the events conducted by the organization take place for not more than fifteen (15) days in a calendar year.

(7) An individual vendor of a farmer's market or roadside stand if the individual meets the requirements of IC 16-42-5-29.

**(8) The holder of a farm winery permit under IC 7.1-3-12-5 or a brewer's permit under IC 7.1-3-2-7(5) if the requirements of IC 16-42-5-30 are met.**

SECTION 15. IC 16-42-5-30 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: **Sec. 30. (a) As used in this section, "permit holder" means the holder of:**

**(1) a farm winery permit under IC 7.1-3-12-5; or**

**(2) a brewer's permit under IC 7.1-3-2-7(5).**

**(b) A permit holder that sells or furnishes alcoholic beverages by the glass at a festival, fair, or other temporary location authorized by the permit holder's permit under IC 7.1, is not considered to be a food establishment and is exempt from the requirements of this title that apply to food establishments, if the following requirements are met:**

**(1) The holder of a farm winery permit furnishes only the following for consumption on the premises, regardless of whether there is a charge:**

**(A) Wine samples.**

**(B) Wine by the glass.**

**The holder may not serve or furnish any food, including any fruit, condiment, flavoring, or garnish added to the wine after the wine is poured from its original container.**

**(2) The holder of a brewer's permit furnishes only the following for consumption on the premises, regardless of whether there is a charge:**

**(A) Beer samples.**

**(B) Beer by the glass.**

**The holder may not serve or furnish any food, including any fruit, condiment, flavoring, or garnish added to the beer after the beer is poured from its original container.**

**(c) A local unit of government (as defined in IC 14-22-31.5-1) may not require any licensure, registration, or certification of a**



1     **permit holder as a condition of providing alcoholic beverages at a**  
2     **festival, fair, or other temporary location authorized by the permit**  
3     **holder's permit under IC 7.1, if the permit holder meets the**  
4     **requirements of this section.**

